

**Submission by Hutchison Global Communications Limited
to the Legco Panel on Information Technology and Broadcasting**

Hutchison Global Communications (HGC) welcomes the opportunity to present our views on the issue of IP Telephony to the Honourable Members.

The rise of IP-based networks and services will cause dramatic changes in the business, operating and regulatory environments of the telecommunications industry worldwide. Changes to existing regulatory frameworks to cater for IP-based services must strike the right balance. On the one hand, an environment conducive to the healthy growth of the markets for new IP-based contents, applications and services should be created. On the other, the rights of the consumers must be protected and the interests of operators offering conventional services over circuit-switched Public Switched Telephone Network (PSTN) must be safeguarded.

In terms of consumer protection, as the reliability of IP-based services has yet to be established, proper measures should be put in place to ensure the satisfaction of the legitimate expectation of the public.

In terms of safeguarding the interests of operators offering conventional public telephone services who have been investing in network infrastructure for provision of PSTN services, due account must be given to these operators' legitimate expectation for reasonable returns when changes to the existing regulatory framework are being considered. Otherwise, there will be adverse impact on their incentives to make future investments.

Integrated services Vs. VoIP

The scope of IP Telephony is very broad. It comprises (i) voice over IP services which are pure voice services provided on their own and not integrated with any other IP-based services ("Pure VoIP Services") and (ii) IP-based services which integrate voice with other types of communication such as data, text, image, video or multimedia ("Integrated IP-based Services"). It is HGC's position that Integrated IP-based Services should not be dealt with in this consultation for the following reasons:

(a) Pure VoIP Services is a substitute for conventional public telephone services because both services offer the same functionality. The functionalities offered by Integrated IP-based Services are quite different, e.g. boundaries are difficult to define in light of the multiplicity of the functionalities which may be offered by the different type of Integrated IP-based Service. This category should, accordingly, be separately dealt with.

(b) The current consultation should not attempt to deal with too many complicated issues all at once, but should just deal with Pure VoIP Services to start with. Once Pure VoIP Services is properly "regulated", OFTA can assess the market position with a view to regulating Integrated IP-based Services.

In the rest of this submission, we will only be discussing Pure VoIP Services.

Technology-neutral licensing framework

VoIP services delivered over both IP-based networks and PSTN, and equipped with any-to-any connectivity that allows calls to be made freely between the two types of networks, share the same basic functionalities as those of the conventional public telephone services. Whether intended or marketed as such, VoIP services with any-to-any connectivity are full substitutes for conventional public telephone services. It is HGC's position that VoIP services with any-to-any connectivity should be subject to the same regulatory regime as conventional public telephone services. There should only be one regulatory regime for voice telephony irrespective of whether the relevant services are conventional public telephone services or VoIP services. There should not be a separate regime (or a

separate licensing category such as a new type of PNETS licences) allowing for sub-standard VoIP services. The licensing framework for voice services should be technology neutral.

If VoIP services are regarded by consumers as full substitutes to what they have been traditionally using, consumers will be confused, and their interests will not be fully protected, if operators offering VoIP services are allowed to be subject to a set of different, and lesser, obligations. It is therefore HGC's position that the full set of FTNS licence conditions should apply to all VoIP services equipped with any-to-any connectivity.

There has been suggestions that VoIP service providers can be issued with a separate category of licences carrying lesser rights and lesser obligations. It is our view that:

- (1) if VoIP service providers are viewed as providing voice services substitutable for traditional voice services, there is no reason why VoIP service providers can be allowed to provide a type of voice services but be subject to lesser obligations; and
- (2) if VoIP service providers are to be subject to the same obligations as FTNS operators, there is no reason why they should be issued with a different type of licence. The public will only be more confused.

It is HGC's view that the disadvantages of having a separate category of licences for VoIP service providers would far outweigh any advantages there might be. There are numerous complicated questions to be addressed in this regard:

- (a) If a separate category of licences are created for VoIP service providers, would they be assigned with ordinary 8-digit telephone numbers? If so:
 - (i) this would create confusion among consumers as users cannot differentiate between the 2 types of services, one of which carry lesser obligations; and
 - (ii) this would accelerate the exhaustion of the current 8-digit telephone numbers, ultimately leading to faster migration to 9 or longer digit numbers, which would have significant cost impact to both operators and users of telecommunications services.
- (b) How would the public know that these separate category of licensees are subject to lesser obligations? How would these VoIP service providers be distinguished from conventional operators, especially as they will still be offering a type of voice service? Would they be distinguished by a special prefix which can be assigned to the VoIP services? Is that sufficient?

Even if that might be sufficient to bring about a basic awareness on the part of the consumers that they are getting a lesser service for such VoIP services assigned with a special prefix, how can we make sure the public will know exactly what they are getting from those services, or rather, what they will not be getting as compared to the conventional telephones which they are using?

- (c) If a separate category of licences are indeed created for VoIP service providers, and there is an understanding that these VoIP service providers will be subject to lesser obligations, what exactly are the obligations that will go hand-in-hand with these new licences? Should they be obliged to provide any-to-any connectivity? Should they be obliged to provide emergency services? Should there be a minimum requirement to the quality of services to be provided? Should there be backup power supply? Where should the line be drawn?
- (d) If special prefixes were to be assigned to this separate category of licensees, how will these numbers be accessible by customers of conventional telephone services? Would these

numbers be freely portable to the PSTN network and vice versa? There will be cost implication to implement all of these. Would such cost be borne by the conventional operators as well? Would such costs be passed down to consumers ultimately?

All these are complicated questions which will need to be carefully considered before any steps are implemented to change the existing regulatory framework to allow for a new type of VoIP licences carrying lesser obligations. It is ultimately the public who will be at the receiving end of these VoIP services. Protection of their interest is of paramount importance. For these reasons, we disagree with the issue of separate licences to VoIP providers. We believe that in the early stage of development, VoIP services should be provided by only FTNS licensees. The market should be reviewed after a period to assess its development. Further changes can be introduced at that stage when the public would be more comfortable with VoIP services in general and there is more public awareness of what VoIP services can provide and what they cannot.

Interconnection Issues

When a provider of IP telephony service uses the broadband connection of another ISP to provide the IP telephony service, it is our view that the broadband provider should be properly compensated by the VoIP provider for use of the broadband network. In the Consultation Paper, the TA seems inclined to conclude, as a general principle, that there is no basis for the broadband connection supplier to ask the VoIP service provider for an additional payment of interconnection charge. The rationale behind the TA's view is that (i) the customers should have already paid for the usage of the broadband connection for the access of contents, applications and services on the Internet with data rate up to the permissible limits or, where applicable, with usage time up to the prescribed limit; and (ii) if the broadband connection provider considers that it is not receiving adequate payment from the customers for conveyance of the additional data, it is the commercial choice of that operator to decide whether to raise the flat fee for the broadband connection or impose a volume-sensitive charge.

We do not agree with this view which would appear to contradict with the TA's view in respect of the interconnection charging arrangements applicable to the International Call Forwarding Services ("ICFS"). That issue is very similar to the issue at hand of whether VoIP service provider should pay the broadband connection provider for the broadband access (in respect of VoIP traffic) which the customers have, arguably, already paid for in general. The TA has decided that ICFS providers should indeed pay MNOs for the use of the MNOs' call forwarding services in the provision of ICFS. Given the parallels between the ICFS scenario and the VoIP services scenario, if ICFS providers should pay an access charge to MNOs, VoIP service providers should also pay a broadband connection charge to broadband connection providers. This could also guarantee the service quality of VoIP service provided under a third-party broadband network to ensure consumers are able to enjoy services with reasonable quality assurance. Rather than fixing the level of the broadband connection charge, operators should be left to negotiate and enter into commercial arrangements for that purpose.

Conclusion

In conclusion, VoIP is an evolving technology, which could bring sweeping changes to the industry and the consumers. A careful consideration ought to be given such that the benefit of the new technology can be properly realized. To ensure customers are properly protected, we consider that VoIP services which are intended to be full substitutes of conventional public telephone services should only be provided by operators sharing same licence obligations as existing FTNS licensees who are offering the conventional public telephone services. As to interconnection charge, a market-driven approach should be adopted by the TA taking a light-handed approach. The market should be allowed to determine the appropriate market structure.